

Laborers Local Union 332 a/w Laborers International Union of North America, AFL-CIO (Master Masonry, Inc.) and Gunzer Beaufort

Laborers Local Union 332 a/w Laborers International Union of North America, AFL-CIO (Catalytic, Inc.) and Ronald Griffin

Laborers Local Union 332 a/w Laborers International Union of North America, AFL-CIO (Meehan and Wineman, Inc.) and Joseph Barbour

Laborers Local Union 332 a/w Laborers International Union of North America, AFL-CIO (Hospital Building & Equipment Company) and Larry Johnson

Laborers Local Union 332 a/w Laborers International Union of North America, AFL-CIO (Fastrack Construction Company, Incorporated) and Calvin Hill. Cases 4-CB-4578, 4-CB-4569, 4-CB-4574, 4-CB-4582, and 4-CB-4589

26 March 1984

DECISION AND ORDER

BY MEMBERS ZIMMERMAN, HUNTER, AND
DENNIS

On 14 November 1983, Administrative Law Judge Thomas D. Johnston issued the attached decision. The Respondent filed exceptions, and the General Counsel filed an answer to Respondent's exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,¹ and conclusions² and to adopt the recommended Order.³

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Laborers Local Union 332 a/w Laborers International Union of North America, AFL-CIO, Philadelphia, Penn-

sylvania, its officers, agents, and representatives, shall take the action set forth in the Order except that the attached notice is substituted for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT cause or attempt to cause Master Masonry, Inc., Hospital Building & Equipment Company, Fastrack Construction Company, Incorporated, and Catalytic, Inc. to lay off, terminate, or not hire Gunzer Beaufort, Larry Johnson, Calvin Hill, or Ronald Griffin or any other employee in violation of Section 8(a)(3) of the Act.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you in Section 7 of the Act except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized by Section 8(a)(3) of the Act.

WE WILL make Gunzer Beaufort, Larry Johnson, Calvin Hill, and Ronald Griffin whole for any loss of wages and benefits suffered by the reason of the discrimination against them from the dates of their layoff, termination, or causing them not to be hired to the dates of their reinstatement by the respective employers Master Masonry, Inc., Hospital Building & Equipment Company, Fastrack Construction Company, Incorporated, and Catalytic, Inc. to their former or substantially equivalent jobs or to the dates that they secure substantially equivalent employment with some other employer, with interest thereon.

WE WILL notify Gunzer Beaufort, Larry Johnson, Calvin Hill, and Ronald Griffin and their respective employers Master Masonry Inc., Hospital Building & Equipment Company, Fastrack Construction Company, Incorporated, and Catalytic, Inc., in writing, that we have no objections to their employment by employers, and WE WILL request that Master Masonry, Inc., Hospital Building & Equipment Company, Fastrack Construction Company, Incorporated, and Catalytic, Inc. rehire or hire or as the case may be their respective employees Gunzer Beaufort, Larry Johnson, Calvin Hill, and Ronald Griffin.

¹ The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

² In the absence of exceptions we adopt the judge's conclusion that the Respondent did not violate Sec. 8(b)(1)(A) and (2) of the Act by causing or attempting to cause Meehan and Wineman, Inc. to terminate Joseph Barbour.

³ We will issue a new notice to employees to reflect par. 2(g) of the recommended Order.

WE WILL expunge from our files any references to the layoff, termination or causing not to be hired of Gunzer Beaufort, Larry Johnson, Calvin Hill and Ronald Griffin and WE WILL notify each of them, in writing, that this has been done and that the incidents involving this unlawful conduct will not be used as a basis for future personnel actions against them, and WE WILL ask Master Masonry, Inc., Hospital Building & Equipment Company, Fastrack Construction Company, Incorporated, and Catalytic, Inc. to remove any references in their files to the layoff, termination, or causing not to be hired of Gunzer Beaufort, Larry Johnson, Calvin Hill, and Ronald Griffin and will notify each of them that we have asked these employers to do this.

LABORERS LOCAL UNION 332 A/W
LABORERS INTERNATIONAL UNION
OF NORTH AMERICA, AFL-CIO

DECISION

STATEMENT OF THE CASE

THOMAS D. JOHNSTON, Administrative Law Judge. These consolidated cases were heard at Philadelphia, Pennsylvania, on July 5 and 6, 1983,¹ pursuant to an amended charge filed by Gunzer Beaufort, an individual, in Case 4-CB-4578 on March 31² and on charges filed by individuals Ronald Griffin in Case 4-CB-4569 on January 18, Joseph Barbour in Case 4-CB-4574 on January 24, Larry Johnson in Case 4-CB-4582 on February 1, and by Calvin Hill in Case 4-CB-4589 on February 4 against Laborers Local Union 332 a/w Laborers International Union of North America, AFL-CIO (herein referred to as the Respondent), and a consolidated complaint issued in Cases 4-CB-4578, 4-CB-4582, and 4-CB-4589 on March 31, a complaint issued in Case 4-CB-4569 on March 18 and a complaint issued in Case 4-CB-4574 on March 10.

These complaints, as amended at the hearing, allege the Respondent caused Master Masonry, Inc. (herein referred to as Master) to lay off Gunzer Beaufort, caused Hospital Building & Equipment Company (herein referred to as Hospital Building) not to hire Larry Johnson, caused Fastrack Construction Company, Incorporated (herein referred to as Fastrack) not to hire Calvin Hill, and caused Meehan and Wineman, Inc. (herein referred to as Meehan) to terminate Joseph Barbour because Beaufort, Johnson, Hill, and Barbour were not members of the Respondent and caused Catalytic, Inc. (herein referred to as Catalytic) to terminate Ronald Griffin because the Respondent believed Griffin was not a member of the Respondent thereby causing or attempting to cause these employers to discriminate against these employees in violation of Section 8(a)(3) of the National

Labor Relations Act (herein referred to as the Act) and thereby violated Section 8(b)(1)(A) and (2) of the Act.

The Respondent in its answers dated March 22 and April 4 to these complaints and amended at the hearing denies having violated the Act as alleged.

The issues are whether the Respondent violated Section 8(b)(1)(A) and (2) of the Act as alleged by discriminatorily causing Master, Hospital Building, Fastrack, Catalytic, and Meehan not to hire Johnson or Hill, to lay off Beaufort, and to terminate Griffin or Barbour because they were not members of the Respondent or in the case of Griffin because the Respondent believed he was not a member of the Respondent.

On the entire record³ in this case and from my observations of the witnesses and after due consideration of the briefs filed by the General Counsel and the Respondent, I make the following⁴

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYERS

Master, a Pennsylvania corporation with its principal office located at Philadelphia, Pennsylvania, is engaged in the masonry construction business. During the 12-month period preceding March 31 in the course of its operations it provided services, valued in excess of \$50,000, directly to firms located outside the Commonwealth of Pennsylvania.

Hospital Building, a Missouri corporation, is engaged in the construction of hospitals and other medical facilities. During the 12-month period preceding March 31 in the course of its operations it provided services, valued in excess of \$50,000, directly to firms located outside the State of Missouri.

Fastrack, with its principal office located at Philadelphia, Pennsylvania, is engaged as a general contractor in the construction business. During the 12-month period preceding March 31 in the course of its operations it purchased and received goods and supplies, valued in excess of \$50,000, directly from points located outside the Commonwealth of Pennsylvania.

Catalytic, a Pennsylvania corporation, with its principal office located at Philadelphia, Pennsylvania, is engaged in the construction business. During the 12-month period preceding March 18 in the course of its operations it performed services, valued in excess of \$50,000, for customers located outside the Commonwealth of Pennsylvania.

Meehan, a Pennsylvania corporation, with its principal office located at Conshohocken, Pennsylvania, is engaged in the construction management business. During the 12-month period preceding March 10 in the course of its operations it received goods and materials, valued in

³ The General Counsel's unopposed motion dated August 16 to correct the transcript is hereby granted except for the correction sought on page 86, line 3 to change a quotation mark to "All" since no quotation mark appears there.

⁴ Unless otherwise indicated the findings are based on the pleadings, admissions, stipulations, and undisputed evidence contained in the record which I credit.

¹ All dates referred to are in 1983 unless otherwise stated.

² The original charge was filed on January 27.

excess of \$50,000, directly from suppliers located outside the Commonwealth of Pennsylvania.

Master, Hospital Building, Fastrack, Catalytic, and Meehan are each employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Laborers Local Union 332 a/w Laborers International Union of North America, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. Background

Master, Hospital Building, Fastrack, Catalytic, and Meehan were all engaged in construction projects at Philadelphia, Pennsylvania. Master's construction project was located in the 7900 block of Germantown Avenue (herein referred to as the Germantown jobsite). Hospital Building was involved in the construction of a rehabilitation project at City Line and Monument Avenues (herein referred to as the City Line jobsite). Fastrack was engaged in refurbishing work at 47th and Walnut Streets (herein referred to as the Walnut jobsite). Catalytic was performing work at a construction project at 28th Street and Passyunk Avenue (herein referred to as the Passyunk jobsite). Meehan was working on a construction project located at 6300 Chew Avenue (herein referred to as the Chew jobsite).

These five employers all had collective-bargaining agreements with the Respondent. This was the collective-bargaining agreement between the General Building Contractors Association, Inc. (herein referred to as the Association) and the Laborers' District Council of the Metropolitan Area of Philadelphia and Vicinity.

Article II, section 1 of that agreement provides, in pertinent part, as follows:

Employer, when doing work in any of the Counties covered as aforesaid and serviced by any Local Union of the Laborers' District Council, reserves the right to use his or its key employees, provided, nevertheless, that each such Employer shall endeavor to employ on each job a fair representation of employees from the geographical area in which the work is located, subject to the provisions of Article III hereof, and who qualify for such employment.

Article III, section 1 which is the union-security provision, provides, in pertinent part, that the Laborers' District Council on behalf of its member unions agrees at the request of the Employer to furnish competent laborers to the Employer. The employee after working for at least 7 days is required to then become and remain a union member in good standing.

The Respondent does not have an exclusive hiring hall with either Master, Hospital Building, Fastrack, Catalytic, or Meehan and employees can be hired directly by those employers at the jobsites.

According to the Respondent's field representative, Samuel Staten Jr., the Respondent does refer employees to jobs. However, in order for the employees to sign up

for the job referral book and to be referred they have to be members of the Respondent.

B. Joseph Barbour's Termination

Joseph Barbour was a member of Laborers Local 135 in Norristown but had been suspended for nonpayment of dues.

Following his attempts to obtain employment with Meehan on the Chew jobsite by contacting their office Barbour stated about January 14 Artis Ore, who was Meehan's project manager but did not testify, called and offered him a job there which he accepted and told him to report to work on Monday, January 17. During the conversation pursuant to Ore's inquiry about whether he was a union member and had a card he informed Ore he was and had a card out of Laborers Local 135.

On January 17, Barbour reported to the Chew jobsite, filled out a W-4 form, and began work when work started about 7:30 or 8 a.m.

Barbour testified that about 10 a.m. that day he observed the Respondent's field representative Staten arrive at the jobsite and, after talking to a few of the approximately 20 persons gathered in front of the superintendent's office, go in the office. About lunchtime the labor foreman informed Barbour to go to the superintendent's office which he did where only Meehan Superintendent James Mooney, Staten, and himself were present. Staten asked him whether he had a union book and if he were a member of the Respondent. After informing Staten he had a union book and was a member of Laborers Local 135 Staten said "Okay" and excused him from the room at which time he returned to work. Mooney did not make any statements during this meeting.

Superintendent Mooney denied recalling having a conversation with Staten, Barbour, and himself together in his office that day. While he acknowledged having a conversation with Staten he denied it pertained to Barbour. According to Mooney he and Staten talked about getting help and Staten was more or less helping him disperse the people who were there looking for work and that Staten had told him he had talked to the crowd of people outside the office seeking employment and if he needed any help to call the office and he or someone would be glad to give him a hand. Mooney said he did not have a steward on the job and from the beginning of the job both Staten and the Respondent Field Representative Louis Walton had helped them to get people to work and get proper laborers on the job and they would police the cards to see that the people had union cards. Mooney upon being questioned whether this had reference to Respondent's union cards answered "whatever union cards."

Field Representative Staten, who contended Meehan hired laborers however it wanted to and was free under the contract to hire who it wished to,⁵ acknowledged

⁵ Staten explained when jobs occur in the Philadelphia area it is his belief the Respondent should have fair representation; however, there is no set number.

going to the jobsite that day but stated it was in response to a call from Superintendent Mooney who wanted him to talk to the members blocking the entrance to the driveway rather than calling the police. Staten denied going to the jobsite to check cards, but said while there he did ask Mooney who was employed there whereupon Mooney told him all the people working were union members. Staten said he did not remember any members of Local 135 being on the job.

Staten further testified he told a group of people outside the office which included some of the Respondent's members that was not the place to gather seeking employment and when the man was ready to hire he would hire but the man was ready to call the police if they did not disperse, whereupon the crowd then dispersed. He then informed Mooney he had talked to the people and if there was any further trouble to call him.

Barbour testified that about 3 p.m. that same day the labor foreman came, gave him his check, and told him he was laid off. The foreman also said it was none of his doings.⁶ Barbour stated he then talked to Superintendent Mooney who informed him he was terminating him because they had come to some sort of an agreement with the Union and it was not because of anything wrong with his work or work habits.

Superintendent Mooney, however, testified he wrote the check to lay off Barbour. His reason was after being told by someone, he did not know who, that Barbour was from a different local he contacted his office in Conshohocken and reported someone had told him that he had a member of Laborers Local 135 on the job whereupon his office told him they had other employment in Conshohocken which would be that person's local.

Staten denied requesting Mooney to terminate Barbour or that the subject was brought up and Mooney, who corroborated Staten's testimony, further denied Staten had made any kind of threats that would induce him to terminate Barbour.

About a week after his layoff Barbour was rehired by Meehan on another jobsite located in Conshohocken.

To the extent the testimony of Barbour conflicts with that of Superintendent Mooney and Field Representative Staten concerning these conversations, I credit Barbour who I find was a more credible witness. Apart from my observations of the witnesses the testimony of both Mooney and Staten was contradictory, vague, and implausible.

C. Gunzer Beaufort's Layoff

Gunzer Beaufort, a member of Laborers Local 57 in Philadelphia, was employed as a laborer by Master on the Germantown jobsite for approximately 4 to 6 weeks. He was hired by Master at the jobsite after being informed by a friend who took him there that they needed help.

About November 30, 1982, Beaufort testified that Respondent Field Representative Walton came to the jobsite where they were working on the second floor of the building, called all the laborers together stopping them

from working, and told them to come down to the courtyard which they did. There Walton checked their union books and said they did not have enough members from Local 332 there. Walton then went and talked to Anthony Nolfi who was the acting job foreman and was in charge of the job for Master.

Both Nolfi and Michael Bennett, who was Master's labor foreman on the jobsite, corroborated Beaufort's testimony about Walton stopping the laborers from working and checking their union books in the courtyard. Bennett also stated that after Walton checked their books he said there were not enough guys from Local 332 on the job and that was going to be a problem.

Nolfi testified after this occurred he asked Walton what was going on whereupon Walton said he had called the men off the job because there were not sufficient Local 332 men on the job. Walton also said he wanted men from Local 332 to work on the job and how it was accomplished was up to Nolfi. Upon asking Walton to put the men back to work and telling him they would discuss it and see what they could do Walton replied he was not going to put them back to work until this thing was settled unless Nolfi wanted pickets on the job. Nolfi denied they wanted pickets and said they wanted to settle the thing amicably.

Nolfi stated he then contacted Joe Washkill,⁷ who is a representative of the Association which negotiated the collective-bargaining agreement with the Respondent, explained to him what had happened and then handed the telephone to Walton who talked to Washkill. After Walton finished talking to Washkill, Nolfi stated he again talked to Washkill who informed him Walton was going to send him a steward for the job because they did not have any steward from the Respondent and Washkill suggested this might settle the matter. According to Nolfi the laborers then went back to work on that basis after the work stoppage for which the laborers got paid had lasted about an hour and a half. However, Walton informed him if more manpower from Local 332 was not employed later there would be pickets on the job.

Field Representative Walton acknowledged going to the jobsite that day and getting the laborers together in the courtyard and checking their union books but denied he engaged in any work stoppage or threatened to, claiming that the laborers returned to work after their cards were checked. Walton explained he had gone to the jobsite after receiving a call from an unemployed member of the Respondent about Master, whom the member wanted to work for, hiring some additional laborers. Walton stated he had previously talked to Master which had three men from other local unions when the job started and under their collective-bargaining agreement Master was entitled to hire its key employees.

Walton's version of his conversation with Nolfi was when Nolfi asked him why he was checking the cards and holding up the men he explained he had previously told Nolfi if he needed additional men other than his key employees that Nolfi would serve Walton by helping him have some kind of representation on the job. He ex-

⁶ The foreman did not testify and this statement by the foreman was not offered for the truth of such statement.

⁷ Washkill did not testify.

plained he was just carding the men who he would send back to work which was his right and if Nolfi had any objections they could both call the Association after Nolfi had informed him he was associated with it. Nolfi then called Washkill, who Walton also talked to, telling him he deserved some sort of fair representation, one man, whereupon Washkill agreed. Nolfi, after talking to Washkill, informed Walton he would put a man on. Walton denied making any demands that Nolfi put a man on, stating all he asked for was fair representation. Walton, who denied having anyone from the Respondent employed on the job, stated the laborers there were paid-up members from other locals and that he specifically asked Nolfi not to lay anyone off because they were members in good standing from different locals whereupon they agreed to put a man on from the Respondent.

Under cross-examination Walton acknowledged he wanted at least one member of the Respondent hired on the job⁸ and that he told Nolfi if he had any Local 332 members there he would not have any objections for Nolfi to bring one to the job so it would not make him look bad in front of his members. According to Walton he was looking bad and the concerned member who had complained was right there.

I credit Nolfi, whose testimony was corroborated in part by both Beaufort and Bennett, rather than Field Representative Walton whom I discredit. Besides my observations of the witnesses Walton's overall testimony was inconsistent and did not appear plausible.

Beaufort testified later that same day after he returned to work, Foreman Bennett told him the Company would have to lay off a couple of men. Beaufort worked the rest of that day and the next day, December 1, he worked half a day at which time he and another employee were laid off by Foreman Bennett who told them they were being laid off.

Following his layoff Beaufort stated he went to the Respondent's office that same day and told Field Representative Walton he had been laid off because of him. Although Beaufort stated he was unable to remember Walton's exact response Walton did mention having men who needed jobs.

Nolfi acknowledged that Beaufort and another employee were laid off work and stated his discussion with Walton somewhat influenced them to lay Beaufort off. While Nolfi also claimed Beaufort would have been laid off within a day or two later because they were getting to the end of the job he also acknowledged that within a day or two later as a result of his discussion with Walton an employee representing the Respondent as the steward was hired on the job along with another laborer who was with him.

Nolfi denied Walton told him to lay anyone off or wanted anyone laid off or discharged because they were not members of the Respondent or that Walton told him he wanted Beaufort fired because he was not a member of the Respondent.

⁸ Walton explained although Nolfi used the word "steward" it was just a man he wanted so he could have fair representation.

D. The Refusal to Hire Larry Johnson

Larry Johnson, who was not a union member, testified on January 5 he went to the City Line jobsite seeking to obtain employment as a laborer with Hospital Building. The previous day his uncle Sam Johnson, who is a member of the Respondent and worked on the jobsite, informed him they might be hiring. After arriving at the jobsite he went to where the laborers gathered and was told by someone to go over the boss' trailer which he did. There he stated one of the bosses, who he believed was named Joe Krause,⁹ instructed him to fill out a W-4 form which he did and told him before starting work to see the Respondent's steward, who was Robert Bey, and a certain foreman.

According to Foreman Kulwein the previous day while he was on his way to find the steward or a foreman to call the Respondent's hall for five men one of his laborers, Sam Johnson,¹⁰ informed him his nephew had just gotten out of the service and needed a job. After Sam Johnson pursuant to his inquiry told him that his nephew was a member of the Respondent and had a book he informed Johnson that he was on his way to see the steward and they needed at least five men the next day and to tell his nephew to come in the next morning. Kulwein also stated one of his supervisors who he had asked told him they could also use an additional man.

The next morning Kulwein stated Larry Johnson and another fellow came to the jobsite and after being introduced to him by Sam Johnson, he sent them along with the five other new employees to see shop steward Bey who would check their books and sign them up. He also told Bey to bring them back to the trailer during the coffee break and they would fill out their W-4 forms.

Larry Johnson testified that steward Bey gathered the approximately 60 employees there together and informed them they were going into the building and start work. While proceeding through the building Bey would tell employees in the group which foremen, some of whom met them, to see. Bey then asked the few remaining employees in the group including him if they had union cards. One or two of the employees pulled out union cards and Johnson informed Bey he did not have a union card. Bey then took Johnson, and another employee who did not have a union card, up a little further and instructed them to wait. About 15 minutes later Bey returned and told both of them he could not let them go to work because they did not have a union card and they could go and wait in the lobby for the union representative to talk to them.

Steward Bey acknowledged informing Johnson and the other employee who did not have union cards to wait. Bey, who denied having the authority to put anyone to work, stated he then went and told Foreman Kulwein the two employees did not have cards whereupon Kulwein said he was not aware of that and that's it. Kulwein, however, testified when Bey brought the five

⁹ Hospital Building's labor general foreman, George Kulwein, denied there was any one there named Joe Krause; however, the general superintendent's name was Robert Krause who did not testify.

¹⁰ Kulwein hired Sam Johnson directly at the jobsite without coming through the Respondent's hall.

employees to him to fill out the W-4 forms¹¹ he asked Bey what happened to Johnson and the other employee. Bey told him they did not have a book and mentioned something about they could not work or would not be able to work or would have to go to the hall but said they were not going to be on the job and they were not members of Local 332 or any other laborers' local. Kulwein apologized stating the uncle had told him they were members of Local 332 and had books. Kulwein, who denied actually hiring Johnson himself, or seeing Johnson except when he first talked to him that morning, denied either he or the Company told Johnson he could not work.

I credit Kulwein rather than Bey. Kulwein's testimony is also consistent with what Bey told Johnson about not working and I credit Johnson's testimony also.

Bey said he then returned to the lobby where Johnson and the other employee were waiting and told them they would have to wait and see Field Representative Staten.

Bey described the procedure and past practice; before new employees were officially hired they had to see him first and have their union cards checked and those employees who had cards he would just tell the foreman they were all right and could go to work and those employees would be sent by him to the superintendent's office where they signed W-4 forms and completed the necessary paperwork. However, those employees whose union cards were not in order he would tell them they had to see Field Representative Staten and he would inform the labor general foreman they did not have cards.

When Field Representative Staten came to the jobsite a couple of hours later Johnson stated he saw him talk to steward Bey and then Staten told him he could not let them work because he had over 300 union members out of work and he was going to get them in before he would take them off the street and that he had just called up two members to come in for the job Johnson was applying for.

Field Representative Staten denied telling Johnson he could not work on the job or that Johnson's working on or attempting to work on the jobsite was even mentioned. His version was while he was on the jobsite on January 5 on other business steward Bey approached him with Johnson and another man who Bey said wanted to talk to him. Johnson then started asking Staten how he would go about getting in the Union. After telling Johnson he would have to obtain a job Johnson mentioned somebody, whom he refused to identify, had promised him a job and was hiring and said they were going to hire him and he had gotten out of bed that morning and Staten was trying to tell him he could get into the Union. He said he then told Johnson he had to get a job first before he talked about the Union. Bey, who claimed he overheard part of the conversation, stated he heard Staten tell them they had to have a job to get into the Union whereupon one of them said you have to have a job to get into the union and you cannot

get into the Union until you have a job and when the general foreman was told they did not have cards he no longer had any desire to hire them.

Johnson further testified as he was getting ready to leave the jobsite he informed his uncle, Sam Johnson, they were not going to let them work. His uncle then went over and talked to Staten and he overheard his uncle tell Staten he did not have the right to stop him from going to work after the Company had hired him and he had filled out the W-4 form whereupon Staten told his uncle if he had done something wrong to take it to the Labor Board.

Staten denied Sam Johnson said anything to him about why his nephew could not work on the job but stated Sam Johnson only asked him why his nephew could not get a union card.

To the extent the testimony of Johnson conflicts with that of union steward Bey and Field Representative Staten I credit Johnson rather than Bey and Staten whom I have previously discredited.

E. Refusal to Hire Calvin Hill

Calvin Hill, who was not a union member, was contacted on Tuesday, January 25, by Earnest Arnold about working as a laborer on the Walnut jobsite and instructed to meet Arnold on the jobsite that Wednesday so he could get his guys lined up to begin work Thursday. Arnold, with whom Hill had previously worked on other jobs and did not testify, was identified by Fastrack¹² Construction Superintendent Philip Miller as Fastrack's demolition foreman on the Walnut Jobsite. Miller, who said he had authorized Arnold to hire laborers on that jobsite, stated Arnold had hired some laborers who had previously worked for Arnold before and that other laborers had been sent there by Respondent Field Representative Staten.

The next day Hill stated he reported to the jobsite about 7 a.m. There were about 15 or 16 persons standing around and Arnold informed them he was waiting for Respondent Field Representative Staten to come out. After Staten arrived and talked to Arnold, Arnold began calling employees' names. Hill was the sixth employee called and Arnold introduced him to Staten and said he had a guy named Sylvester who was supposed to work for him but he was not there that day and to keep from having any type of problem the next day if Sylvester did not show up Hill would be his sixth man and would work. Arnold also agreed to hire four additional employees whom Staten would send to him from the Respondent's hall. Staten took down Hill's name, address, and telephone number and told Arnold the arrangement was okay but he could not hire anybody else except Hill without giving him a call.

Both Respondent Field Representative Staten and the Respondent's steward on the job, Copland Smith, acknowledged such a hiring agreement arrangement was made with Arnold and according to Staten the next day he sent his four men to the jobsite.

¹¹ Kulwein acknowledged Johnson could have gone to the trailer earlier while he was out and that Krause may have gotten someone to sign the W-4 form.

¹² Fastrack is a subsidiary of D.H. Dickstein Association.

Hill described the other five men hired by Arnold as men who had all worked for Arnold before. Staten testified that of these five men one had a union book, two were suspended members, and two were new employees whom he signed up for the Respondent.

Hill testified the next day on reporting to the jobsite Sylvester was not there and Arnold informed him he was hired and to give him his W-4 form which he did. However, Arnold then mentioned all their dumpsters had not come in and that he was only going to use six men that day and for Hill to come back Monday when the dumpsters would be there so they could go to work.

On Monday, January 31, Hill testified he reported to the jobsite and after informing Arnold pursuant to his inquiry he was ready to go to work Respondent steward Smith came and asked him if he had a union card. He informed Smith he was not in the union but an agreement had been made between Staten and his boss that he was going to work and gain entry into the union after so many days. Arnold, who was present, also informed Smith it had been agreed with Staten that Hill would be his sixth man and would work for him. Smith, however, said the man, apparently referring to Staten, had not told him anything about it and stated Hill could not work. Smith then said he would have to get Staten on the telephone and for Hill to stay there and wait for Staten. About 9 a.m. Smith informed Hill, who was still waiting, that Staten would be out later on but indicated Staten had said Hill could not go to work. Hill then reported to Arnold, who asked him why he could not work, that Smith had told him Staten said he could not work. Arnold told Hill to do whatever Smith said and he would have to wait until Staten came out but said he did not understand why he could not work when the agreement had been made. Hill remained at the jobsite until quitting time that day without working, however, Staten did not come to the jobsite.

The next day, February 1, Hill stated he returned to the jobsite at 7 a.m. and again waited. Respondent steward Smith told him Staten would be out there that day. Hill also told Arnold he wanted to work and Smith had said Staten was coming out whereupon Arnold told him as soon as they could get ahold of Staten they would get the thing resolved.

Steward Smith, who said as steward he is responsible for checking the union books of laborers when they are first employed and had been told Hill was not a union member, denied he ever objected to Hill being hired or that anyone from the Respondent had requested Hill not be placed on the job and he also denied telling Hill he had spoken to Staten. Rather, he testified that a couple of days after the job started Hill approached him about wanting to be hired on the jobsite and when he could not get any clarification that Arnold had hired him he told Hill he had no authority and to see Superintendent Miller. According to Smith when Hill reported Superintendent Miller had said he was not doing any hiring he talked to Miller himself who confirmed it. However, about 30 minutes later Smith stated after he saw Miller hire a laborer, Robert Mackie, who is a member of the Respondent and who was hanging around the job, he complained to Smith he was not authorized to do that

because Hill was supposed to have been hired next. Miller hired Mackie anyway and told Smith that Smith did not have anything to do with the hiring because he himself was doing all the hiring and if Smith wanted to stay there to stay in his position as steward.

I credit Hill instead of steward Smith. Besides my observations of the witnesses in discrediting Smith his own testimony regarding his conversation with Hill is inconsistent with his acknowledgment of the hiring agreement made between Staten and Arnold to hire Hill.

Later that same morning Hill testified he went to the Respondent's hall after calling and being informed Field Representative Staten would be there. Upon seeing Staten outside the hall and mentioning his name and asking whether Staten remembered him, he said he was supposed to go to work but Staten's steward would not let him. Staten's only response was his boss had changed it.

Field Representative Staten, who was aware Hill was not a union member, denied telling anyone Hill could not work or requesting the Company not to hire Hill. Staten acknowledged having a conversation with Hill at the Respondent's hall but denied Hill mentioned there was an agreement under which he was to be hired or that Hill mentioned he was not working at the jobsite. His version was this conversation occurred the day after the job started and Hill had come there and told him he wanted to join the Union. When Hill pursuant to his inquiry stated he did not have a job he told Hill he could not get into the Union until he did. Hill mentioned he did not see how he could go to work and he had not been called whereupon he said he reminded Hill just to say he was the next man. He then told Hill he was not going to give him a card until he was sure Hill was on the job working which never came about.

I credit Hill rather than Staten whom I have previously discredited.

According to Staten when he went back to the job Fastrack had hired more laborers and Arnold did not have any control over hiring whereupon he told Superintendent Miller that Hill was supposed to be the next guy hired. However, Miller denied they had anything to do with Arnold's commitments which were no good as far as they were concerned and they now did all the hiring and would hire who they wanted.

Superintendent Miller, whom I credit, acknowledged Hill was hired by Arnold to work on the jobsite but never did. He denied Staten mentioned to him he had an agreement with Arnold about Hill being the next laborer to be hired. He did state he had a conversation with Staten on January 27 during which Staten mentioned he had an agreement with Arnold as a contractor¹³ and insisted Miller had to live up to it and hire only members of Local 332 stating this was his area and they had to be Local 332. He informed Staten that Arnold was only an employee at Fastrack and was not a contractor and any agreement Arnold might have with the Union was void.

¹³ Staten testified that Arnold, who had previously worked as a contractor, had introduced himself to Staten as the demolition contractor on the job.

Miller stated Staten also mentioned shutting down because of proper representation.

Miller testified he then reported the matter to his boss Dave Dickstein who later came to the job and he believed an agreement, the terms of which he had no knowledge, was reached between the Respondent and Dickstein because the matter was resolved and the job started.

Miller denied Staten told him to discharge Hill or not to hire or to terminate anyone. He also denied either he or anyone from the Company to his knowledge had told Hill he could not work.

Hill, who filed his charge with the Board on February 4, stated afterwards Staten got him a job on the same jobsite working for a plumber and he was hired on March 3. Staten acknowledged getting Hill a job claiming he did it as a favor because Hill had complained how much he needed work and it seemed Arnold was on the job and did promise Hill a job but Arnold was kicked off the job and Hill still did not get employment.

F. Termination of Ronald Griffin

John Hitchens, who is the job superintendent for Catalytic on the Passyunk jobsite and does the hiring of employees, testified that on January 17 following a request from the Philadelphia Gas Works his Company needed to hire two additional laborers on the jobsite. After unsuccessfully attempting to contact the Respondent's hall he asked his foreman, Warren Griffin, if he knew of anybody out of work because they needed two men the first thing the next day. When Griffin mentioned his brother Ronald Griffin, who was also a member of the Respondent, he instructed Foreman Griffin to tell his brother to be there and he would contact the Respondent and advise them what he had done.

Foreman Griffin, who corroborated Superintendent Hitchens' testimony, further stated Hitchens said he would get the second man from the Respondent. He also testified that evening he informed his brother Ronald Griffin about the job offer.

Ronald Griffin, who accepted the job offer, stated that on January 18 he reported to the jobsite at which time he was introduced to Superintendent Hitchens who instructed his brother to take him to the shanty and later to fill out a W-4 form. Between approximately 7:10 and 7:15 a.m. after Ronald Griffin had changed into his work clothes Hitchens came and told Foreman Griffin he needed to see him and his brother whereupon they went to Hitchens' office. Both Foreman Griffin and Superintendent Hitchens corroborated Ronald Griffin's testimony which I credit.

Foreman Griffin, whose testimony was corroborated by Ronald Griffin, stated at the office Hitchens told them he could not hire his brother because he had talked to Field Representative Staten who had told him all the men had to come from the union hall off the book so he could not hire him. Upon asking Hitchens why Staten would tell him something like that, Hitchens denied knowing but said to tell his brother to go to the Union and see Staten because Staten wanted to talk to him.

Superintendent Hitchens acknowledged having such a conversation with them. He testified that on calling the

Respondent's hall that morning and explaining to Field Representative Walton what he had done Walton told him Griffin had no business being there and he had people out of work and the laborers came out of his hall and he would send him two men. Walton also told Hitchens he would have to talk to his boss, Field Representative Staten.

Hitchens then talked to Staten and told him what he had done and that he had Ronald Griffin there and needed one more man to fill a request and mentioned he had been to the hall the day before. Staten's response was they had an exclusive hiring hall and everybody was referred out of their hall and he had men he could send him who were out of work and he would send him two men to fill the job. Hitchens then asked Staten what he would like for him to do with Griffin and whether to put him to work or to send him to the hall. Staten instructed him to tell Griffin to come to the hall where he would be waiting to see him. Hitchens also testified it was at that time as discussed supra he called Foreman Griffin and Ronald Griffin into the office and explained what had happened.

Within less than an hour and a half later, Hitchens stated two laborers came to the jobsite from the Respondent's hall who he hired. Foreman Griffin stated they reported to the jobsite between 8:30 and 9 a.m. with referral slips¹⁴ from the Respondent and were put to work.

Hitchens, who acknowledged he hired employees from any place and denied there was an exclusive hiring hall, gave as his reasons for not letting Ronald Griffin work was because he respected the request of Field Representative Staten and the Respondent because he had a good relationship with them and Catalytic tried to keep a good working relationship with the Union.

Both Field Representatives Walton and Staten acknowledged talking to Superintendent Hitchens who called on January 18. However, their versions of the conversations differed.

Walton testified that between 6:30 and 7 a.m. he had received a telephone call from Robert Henderson who he said was the steward¹⁵ on the Passyunk jobsite requesting two laborers and Henderson also told him he had been told by Hitchens to call the Union and he was authorized to do so. He then dispatched two laborers, Oscar Diaz and Rodney Carter, from the book and they left the hall.

About 10 or 15 minutes later Walton stated that Superintendent Hitchens called and said he had a man Ronald Griffin whom he wanted to put to work. He informed Hitchens that Griffin was not one of the guys he had signed off the book and he told him he would send two men.¹⁶ Pursuant to Hitchens' request he then let him talk

¹⁴ Foreman Griffin denied ever seeing referral slips on their job before.

¹⁵ Walton acknowledged he did not know who had appointed Henderson steward and denied it was him or his district.

¹⁶ Walton subsequently stated he told Hitchens he had received a call from the steward and the men were on their way.

to Staten. Walton denied telling Hitchens the men had to be hired out of the Respondent's hall and also stated he knew Ronald Griffin was a member of the Respondent and claimed if Griffin could have gotten a job there it would have been fine with him.

Field Representative Staten testified that Hitchens told him there were two men on the way to the job and he needed only one because he had a guy there on the job he wanted to put on. When Hitchens, pursuant to his inquiry, said he had requested two people and had openings for two he told Hitchens the steward had called and ordered the two guys. Upon Hitchens saying he had requested two people but now he had a guy there he wanted to put on, he informed Hitchens since he had requested two employees and they had been dispatched Hitchens would have to pay a 4-hour penalty for showup time for one of the guys if he did not want to put him to work. Although Hitchens first said he was not going to pay the 4 hours, after he told Hitchens not to take another step until there were more answers, Hitchens indicated he would put the man to work instead.

Staten denied Hitchens mentioned Ronald Griffin's name or knowing the name of the man Hitchens wanted to hire or that Hitchens had asked him what to do with the other man. He also denied demanding that anybody be terminated or not employed.

I credit the testimony of Superintendent Hitchens regarding these conversations rather than Field Representatives Staten and Walton for reasons previously given.

Robert Henderson, who testified that on starting to work for Catalytic in January he was informed by Field Representative Staten¹⁷ that he would be the temporary steward, stated on January 18 he called the Respondent's hall about 6:15 a.m. from his home and informed Field Representative Walton two men were needed on the job at Catalytic and subsequently Carter and Diaz reported and were employed. According to Henderson, on the previous Friday Foreman Griffin had told him they would probably need two men on the following Monday after Foreman Griffin said he had spoken to the superintendent and had called the Respondent's hall and could not get an answer. He stated he informed Foreman Griffin he would call that Tuesday himself. On cross-examination Henderson acknowledged he did not recall if Foreman Griffin had told him directly to call the hall and when he got to the job Ronald Griffin was already there. He further acknowledged Catalytic had refused to recognize him as being the steward.

Foreman Griffin testified Henderson worked as a laborer on his crew. He denied Henderson was a steward prior to January 18 or telling Henderson the Company needed two additional laborers or that he had asked Henderson to call the hall or that Henderson told him he would call the hall.

Henderson did not impress me as being a credible witness and I credit Foreman Griffin instead whose testimony is supported by Superintendent Hitchens.

According to Foreman Griffin if men are needed Hitchens calls the hall and on occasions he has asked him if he knows of anyone he wants to bring in.

Ronald Griffin testified he went to the Respondent's hall later the same day asked for Staten but was told he was out. While there Field Representative Walton asked him what the problem was whereupon he told Walton he had just gotten kicked off the job there. Walton informed him he had talked to the superintendent and Griffin would have to talk to Staten and it was out of his hands. Walton also mentioned something like the Union did not knock him off the job. Ronald Griffin did not talk to Staten but instead left the hall and went to the Board where he filed the charge. Field Representative Walton did not deny having such a conversation with Ronald Griffin.

Foreman Griffin credibly testified that the same day he called Field Representative Staten and asked him why he could not hire his brother. Staten then asked if his brother was a member of the Respondent and on telling Staten he was Staten said he would have to come off the union books from the union hall. He then asked Staten when this new thing started where you have to come from the union hall because they could solicit their own work. Staten's response was that was the way it goes and he would have to come from the union hall.

Foreman Griffin also stated the latter part of that week Field Representative Staten came to the jobsite and said he had made a mistake and his brother could come back to the job and work. Griffin denied however, being unable to contact his brother.

Ronald Griffin later received a letter from the Respondent. This letter from Field Representative Staten dated January 26 apologized to Ronald Griffin for the inconvenience. It also denied Staten had told Warren Griffin that Ronald Griffin could not work and further stated the contractor had never informed him Ronald Griffin was a union member and that he had told the contractor if he put him to work he had to join the Union. The letter requested Ronald Griffin to contact Staten.

Superintendent Hitchens stated that Staten later came to the jobsite and informed him to get rid of one of the men he had sent and to hire Ronald Griffin instead; however, he had refused. According to Hitchens the job lasted until January 30 when his need for laborers ended.¹⁸

G. Analysis and Conclusions

The General Counsel contends, contrary to the Respondent's denials, that the Respondent violated Section 8(b)(1)(A) and (2) of the Act by discriminatorily causing certain employers including Master, Hospital Building, Fastrack, Catalytic, or Meehan not to hire Johnson or Hill, to lay off Beaufort, or to terminate Griffin or Barbour because they were not members of the Respondent or in the case of Griffin because the Respondent believed he was not a member of the Respondent.

Section 8(b)(1)(A) of the Act prohibits a union from restraining or coercing employees in the exercise of the rights guaranteed in Section 7 of the Act. Section 8(b)(2) of the Act prohibits a union from causing or attempting

¹⁷ Staten did not testify he had appointed Henderson.

¹⁸ The record does not establish whether any laborers worked after that date.

to cause an employer to discriminate against an employee in violation of Section 8(a)(3) of the Act.

Under Section 8(b)(2) of the Act when a union prevents an employee from being hired or causes an employee's discharge thereby demonstrating its influence over the employee and its power to affect his livelihood there is a presumption the effect of such action is to encourage union membership on the part of all employees who have perceived that exercise of power. However, such presumption may be rebutted where facts show the action taken by the union was necessary to the effective performance of its function of representing its constituency. *Operating Engineers Local 18 (William F. Murphy)*, 204 NLRB 681 (1973), enf. denied after remand 555 F.2d 552 (6th Cir. 1977).

The evidence supra with respect to Joseph Barbour, who was a member of Laborers Local 135, establishes he was hired by Meehan as a laborer on the Chew jobsite and began work on January 17, 1983, and was laid off work the same day he began following a visit to the jobsite by Respondent Field Representative Staten. Although Barbour credibly testified Meehan Superintendent Mooney informed him he was terminating him because they had come to some sort of an agreement with the Respondent and Mooney admitted Barbour was terminated at the direction of his office after he had reported to them he had a member of Laborers Local 135 working on the job and they had indicated they had other employment in Local 135's jurisdiction, absence as here any evidence to show the Respondent made any demands on Meehan to lay Barbour off, as both Meehan and the Respondent deny, or evidence to show an agreement had actually been reached between Meehan and the Respondent regarding Barbour, or to employ only the Respondent's members on the jobsite, I find the evidence is insufficient to establish that the Respondent either caused or attempted to cause Meehan to discriminate against Barbour by terminating him on January 17, 1983, because he was not a member of the Respondent thereby violating Section 8(b)(1)(A) and (2) of the Act.

Regarding Gunzer Beaufort the findings supra show that Beaufort, who was a member of Laborers Local 57, was hired directly by and worked for Master as a laborer on the Germantown jobsite for 4 to 6 weeks. His layoff occurred the day after Respondent Field Representative Walton came to the jobsite and caused a work stoppage of Master's laborers because he claimed Master did not have enough of the Respondent's members working on the job. Following threats by Walton to Master Job Foreman Nolfi about not putting the laborers back to work until the thing was settled unless Nolfi wanted pickets on the job, Nolfi subsequently agreed to hire a steward from the Respondent and acknowledged his discussion with Walton influenced them to lay Beaufort off. Walton indicated to Beaufort he was laid off because the Respondent's members needed jobs. Although Nolfi contended Beaufort would have been laid off within a day or two anyway because they were getting to the end of the job not only was the steward hired after Beaufort and another laborer were laid off but another laborer accompanying the steward was also hired along with the steward. Further, there was no showing the hiring of

Beaufort by Master 4 to 6 weeks earlier was in violation of Master's collective-bargaining agreement with the Respondent or at the time of this incident that agreement was being violated. The agreement itself provided for hiring a fair representation of employees from the geographical area rather than the Respondent's members as the Respondent argues in its brief. Based on such evidence I find the Respondent caused Master to discriminatorily lay off Beaufort on December 1, 1982, because he was not a member of the Respondent and the Respondent thereby violated Section 8(b)(1)(A) and (2) of the Act.

Insofar as Larry Johnson, who was not a union member, is concerned the evidence supra shows that on January 5 when he attempted to go to work for Hospital Building on the City Line jobsite Respondent steward Bey, who checked new employees' union books before they were officially hired, refused to let him go to work on learning he did not have a union book and giving as the reason he did not have a union card. Bey informed Hospital Building Labor General Foreman Kelwein, who had indicated to Johnson he was being hired, that Johnson did not have a union book and was not a member of the Respondent or any other laborer's local and he could not work and was not going to be on that job as a result of which Johnson was not hired. Field Representative Staten further informed Johnson he could not let him work because he had other union members out of work and he was going to get them in before he would hire anyone off the street and he had called members to take the job Johnson was applying for. The fact Foreman Kelwein may have been misled into believing Johnson was a member of the Respondent would not afford a defense to the Respondent since it was not Master but the Respondent which caused Johnson not to be hired. Based on such evidence I find the Respondent on January 5 caused Hospital Building not to hire Johnson as a laborer on the City Line jobsite because he was not a member of the Respondent or any other laborers local and thereby violated Section 8(b)(1)(A) and (2) of the Act.

The findings supra with respect to Calvin Hill establish that Fastrack Foreman Arnold had informed Hill, who was not a union member, that he was hiring him to work as a laborer for Fastrack on the Walnut jobsite. However, on January 31 when Hill attempted to begin work the Respondent steward Smith on being told by Hill pursuant to Smith's inquiry that he did not have a union card he informed Hill in the presence of Foreman Arnold that he could not work on the jobsite. This occurred notwithstanding both Hill and Arnold protested to Smith that there had been an agreement with Respondent Field Representative Staten who admitted such agreement was made that Hill would be employed by him. Hill as a result of the Respondent's conduct did not go to work as a laborer for Fastrack on the jobsite on the job Arnold had hired him for. Further, Field Representative Staten demanded that Fastrack Superintendent Miller only hire the Respondent's members on the jobsite. Under these circumstances I find the Respondent on January 31 caused Fastrack not to hire Hill as a laborer

on the Walnut jobsite because he was not a member of the Respondent thereby violating Section 8(b)(1)(A) and (2) of the Act.

The findings supra with respect to Ronald Griffin, who was a member of the Respondent, establishes he was offered and accepted a job by Catalytic on January 17 to work as a laborer on the Passyunk jobsite beginning on January 18. However, after reporting to the jobsite on January 18 to begin work Catalytic Superintendent Hitchens informed him he could not hire him. This refusal by Hitchens resulted from demands made to him by Respondent Field Representatives Walton and Staten that Griffin could not be hired because he had not been referred by the Respondent's hall notwithstanding there was no exclusive hiring hall and employees including members of the Respondent could seek their own employment. It further appears from statements made by Field Representative Staten to Foreman Griffin and in his letter to Ronald Griffin that Staten was under the impression Ronald Griffin was not a member of the Respondent when he was denied employment. For these reasons I find the Respondent caused Catalytic to terminate Griffin on January 18, 1983, because the Respondent did not refer him to the job and believed he was not a member of the Respondent thereby violating Section 8(b)(1)(A) and (2) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section III, above, found to constitute unfair labor practices occurring in connection with the operations of Master, Catalytic, Meehan, Hospital Building, and Fastrack have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

CONCLUSIONS OF LAW

1. Master Masonry, Inc.; Meehan and Wineman, Inc.; Hospital Building & Equipment Company; Fastrack Construction Company, Incorporated; and Catalytic, Inc. are each employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Laborers Local Union 332 a/w Laborers International Union of North America, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. By causing Master Masonry, Inc. to discriminatorily lay off Gunzer Beaufort on December 1, 1982, because he was not a member of the Respondent; by causing Hospital Building & Equipment Company not to hire Larry Johnson on January 5, 1983, because he was not a member of the Respondent or any other laborers local; by causing Fastrack Construction Company, Incorporated not to hire Calvin Hill on January 31, 1983, because he was not a member of the Respondent; and by causing Catalytic, Inc. to terminate Ronald Griffin on January 18, 1983, because the Respondent did not refer him to the job and believed he was not a member of the Respondent, the Respondent thereby violated Section 8(b)(1)(A) and (2) of the Act.

4. The Respondent did not violate Section 8(b)(1)(A) and (2) of the Act by causing or attempting to cause Meehan and Wineman, Inc. to terminate Joseph Barbour as alleged.

5. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices within the meaning of Section 8(b)(1)(A) and (2) of the Act, I shall recommend that it cease and desist therefrom and take certain affirmative action to effectuate the purposes of the Act.

Accordingly, having found that the Respondent discriminatorily caused Master Masonry, Inc. to lay off Gunzer Beaufort on December 1, 1982; Hospital Building & Equipment Company not to hire Larry Johnson on January 5, 1983; Fastrack Construction Company, Incorporated not to hire Calvin Hill on January 31, 1983; and Catalytic, Inc. to terminate Ronald Griffin on January 18, 1983, it shall be ordered to make each of these four employees whole for any loss of wages and benefits they suffered by reason of the Respondent's discrimination against them from the date of the Respondent's unlawful conduct against them herein found until they are hired or rehired as the case may be by their respective employers named above to their former or substantial equivalent jobs or until they obtain substantially equivalent employment elsewhere. Further, the Respondent shall notify each of these employers in writing with a copy to the employee of that employer involved that it has no objection to his being hired or rehired as the case may be and affirmatively request that the employer hire or rehire the particular employee involved for the employment which he would have had were it not for the Respondent's unlawful conduct, or for substantially equivalent employment.¹⁹ Loss of earnings shall be computed in the manner set forth in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest thereon computed in the manner set forth in *Florida Steel Corp.*, 231 NLRB 651 (1977). See generally *Isis Plumbing Co.*, 138 NLRB 716 (1962).

The Respondent shall also be ordered to expunge from its records any references to the layoff, termination, or causing not to be hired of Gunzer Beaufort, Larry Johnson, Calvin Hill, and Ronald Griffin and to notify each of them, in writing, that this has been done and that evidence of these unlawful actions will not be used as a basis for future personnel actions against them. Further, the Respondent shall also request Master Masonry, Inc., Hospital Building & Equipment Company, Fastrack Construction Company, Incorporated, and Catalytic Inc. to expunge from their files any references to the layoff, termination, or causing not to be hired of Gunzer Beaufort,

¹⁹ See *Stage Employees Local 644 IATSE (King-Hitzig Production)*, 259 NLRB 1415 (1982); and *Sheet Metal Workers Local 355 (Zinsco Electrical Products)*, 254 NLRB 773 (1981).

While such a remedy imposed here is not applicable to short term or temporary jobs, *Operating Engineers Local 406 (Ford, Bacon, & Davis Construction Corp.)*, 262 NLRB 50 (1982), the record here does not clearly establish these jobs were either short term or temporary.

Larry Johnson, Calvin Hill, and Ronald Griffin and to notify each of them, in writing, that this has been done and that evidence of the unlawful actions will not be used as a basis for future personnel actions against them if these employers are willing. See *Laborers Local 576 (Arthur B. Myr Sheet Metal Ind., Inc.)*, 267 NLRB 631 (1983).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended²⁰

ORDER

The Respondent, Laborers Local Union 332 a/w Laborers International Union of North America, AFL-CIO, Philadelphia, Pennsylvania, by its officers, representatives, and agents, shall

1. Cease and desist from

(a) Causing or attempting to cause Master Masonry, Inc.; Hospital Building & Equipment Company; Fastrack Construction Company, Incorporated; or Catalytic Inc. to lay off, terminate or not to hire Gunzer Beaufort, Larry Johnson, Calvin Hill, or Ronald Griffin or any other employee in violation of Section 8(a)(3) of the Act.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized by Section 8(a)(3) of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make Gunzer Beaufort, Larry Johnson, Calvin Hill, and Ronald Griffin each whole for any loss of wages and benefits suffered by reason of the discrimination against them from the date of their layoff, termination, or causing them not to be hired as herein found to the dates of their reinstatement by the respective employers Master Masonry, Inc., Hospital Building & Equipment Company, Fastrack Construction Company, Incorporated, or Catalytic, Inc. to their former or substantially equivalent jobs or to the dates they secure substantially equivalent employment with some other employer in the manner set forth in that section of this Decision entitled "The Remedy."

²⁰ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(b) Notify Gunzer Beaufort, Larry Johnson, Calvin Hill, and Ronald Griffin and their respective employers Master Masonry, Inc., Hospital Building & Equipment Company, Fastrack Construction Company, Incorporated, and Catalytic, Inc., in writing, that it has no objection to the employment of these employees by their particular employers involved and request that these employers hire or rehire as the case may be these particular employees.

(c) Expunge from its files any references to the layoff, termination, or causing not to be hired of Gunzer Beaufort, Larry Johnson, Calvin Hill, and Ronald Griffin and notify each of them in writing that this has been done and that the incidents involving this unlawful conduct will not be used as a basis for future personnel actions against them.

(d) Post at its office and other places where it customarily posts notices to members copies of the attached notice marked "Appendix."²¹ Copies of said notice on forms provided by the Regional Director for Region 4, after being signed by Respondent's authorized representative, shall be posted immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(e) Forward signed copies of said notice to the Regional Director for Region 4, for posting by Master Masonry, Inc., Hospital Building & Equipment Company, Fastrack Construction Company, Incorporated, and Catalytic, Inc., if willing, at all locations where notices to employees are customarily posted.

(f) Request Master Masonry, Inc., Hospital Building & Equipment Company, Fastrack Construction Company, Incorporated, and Catalytic, Inc. to expunge from their files any references to the layoff, termination, or causing not to be hired of Gunzer Beaufort, Larry Johnson, Calvin Hill, and Ronald Griffin and to notify each of these employees in writing that this has been done and that evidence of the unlawful actions will not be used as a basis for future personnel actions against them, if these employers are willing.

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

²¹ If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."